



October 13, 2016

## KANSAS BULLETIN NO. KS300-17-3

### **SUBJECT: LTP—Conservation Program Contract—Guidance for Contract Reviews, 12 Month Waivers, Agreements Covering Non-Compliance, and the Associated Flow Chart**

**Purpose.** Provide guidance regarding contract reviews, waivers to the requirement to start a financially assisted conservation practice (CP) in the first 12 months of contract obligation, agreements covering non-compliance, and the associated “Flow Chart”

**Expiration Date.** September 30, 2018

The flow chart in Attachment 1 has been developed to clarify the process of completing contract reviews; use of Form NRCS-CPA-13, Contract Review; waivers to the requirement to commence a CP in the first 12 months of contract obligation; and Form NRCS-CPA-153, Agreement Covering Non-Compliance with Provisions of Contract. The flow chart shall be used with policy in Title 440, Conservation Programs Manual (CPM), Part 512, Section 512.55, and the additional information in this bulletin.

#### **Annual Contract Reviews**

Per Title 440, CPM, Part 512, Section 512.55, the designated conservationist must review contract implementation with the Conservation Program Contracting (CPC) participant annually and record findings in the Program Contracts System (ProTracts) “Contract Review” module and in the CPC case file.

The first contract review must be completed within 12 months of obligation in order to document meeting program CP requirements as outlined in Title 440, CPM, Part 512, Section 512.45C.

Contract reviews must be completed by calendar year.

Per Title 440, CPM, Part 512, Section 512.45(C), CPs may be accomplished at any time prior to the year scheduled or no later than one year after the planned year. It is not necessary to modify contracts when this provision of policy is used. The Natural Resources Conservation Service (NRCS) representative will document the specific contract items that are delayed by this provision on Form NRCS-CPA-13 within the ProTracts “Contract Review” module. Form NRCS-CPA-13 will be placed in the contract folder. ProTracts does not archive Form NRCS-CPA-13, only the most recent form is stored in ProTracts.

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**Note:** Conservation Stewardship Program (CSP08) contracts must have an enhancement completed by the end of each fiscal year (FY).

All required treatment must be installed at least 12 months before the end of the contract period.

**Waiver to requirement to commence a CP in the first 12 months of contract obligation**

Per Title 440, CPM, Part 512, Section 512.45(C), failure to start an Environmental Quality Incentives Program (EQIP) or Wildlife Habitat Incentive Program (WHIP) CP within the first 12 months of the contract constitutes non-compliance with the provisions of the contract. The state conservationist (STC) may waive this requirement if requested in writing by the participant. Attachment 2 shall be used to document the written request from the participant.

The STC may waive this requirement in instances where the participant is prohibited from installing a planned practice for meritorious reasons beyond their control such as:

- (i) Alleviation of imminent and significant environmental problems
- (ii) Prevention of endangerment of life or property
- (iii) Seasonal weather constraints
- (iv) Other significant reasons hindering the installation of a planned CP that is beyond the control of the contract holder

The participant must agree to the revised CP application schedule on Form NRCS-CPA-153. The waiver will expire one year from the date signed by the STC, or at the 24-month anniversary of contract obligation, whichever comes first. If a CP has not been started prior to the waiver expiration, the contract will be terminated in accordance with Title 440, CPM, Part 512, Section 512.57, Cancelling and Terminating Contracts.

**Note:** CSP08 contracts are not eligible for this type of waiver. Participants must complete an enhancement by the end of the FY during the year of obligation.

**NRCS-CPA-153**

All Form NRCS-CPA-153s shall be submitted to the assistant state conservationist for field operations (ASTC-FO) for review prior to presentation to the participants for signature. Of particular importance, is making sure the correct documentation is in the details of non-compliance (section 1 of Form NRCS CPA-153).

Form NRCS-CPA-153 is to be completed in ProTracts with a hard copy on file in the CPC case file.

Supervisory district conservationists (SDCs) and district conservationists (DCs) shall ensure the following are stated on Form NRCS-CPA-153.

Section 1–Details of Non-Compliance:

- Basis for the potential violation
- Actions to resolve the violation

Section 2–Effect of Continued Non-Compliance with Provisions of CPC:

- Timeframe to resolve the violation (not to exceed 1 year)

**Note:** Consequences of failure to remedy the violation are pre-populated in Section 2 and require no changes.

All contract participants, including zero percent participants, shall sign Form NRCS-CPA-153. If all signatures cannot be obtained, then contract termination shall be initiated.

The following statement shall be used for Form NRCS-CPA-153 details of non-compliance when accompanied by a waiver to the requirement to commence a CP in the first 12 months of contract obligation. The date entered in Section 2 of the NRCS-CPA-153 shall be the contract obligation two-year anniversary date.

There has been no conservation practice applied or commenced in the first 12 months of contract obligation. A conservation practice shall be commenced or applied no later than one year from the state conservationist signature date on the accompanying waiver to the contract requirement to apply or commence a financially assisted conservation practice within the first 12 months of a Conservation Program Contracting, or by the date shown in section 2 below, whichever comes first. Failure to correct the non-compliance may result in the actions stated in section 2 below.

The following statement shall be used for Form NRCS-CPA-153 details of non-compliance when no conservation practices have been commenced in the first 12 months of contract obligation and no waiver has been requested by the participants in the first 12 months of the contract.

This contract is in violation because there has been no conservation practice applied or commenced in the first 12 months of contract obligation and no waiver to the requirement to commence a conservation practice in the first 12 months of contract obligation was requested prior to the 12-month anniversary of contract obligation. A conservation practice shall be commenced or applied no later than the date shown in section 2 below. Failure to correct the non-compliance may result in the actions stated in section 2 below.

When Form NRCS-CPA-153 is being issued for a termination, the following information shall be included.

In Section 1, the basis for non-compliance and any actions that were not completed per a previous Form NRCS-CPA-153 shall be restated and include a statement that the actions were not completed.

In Section 2, enter the date the Form NRCS-CPA-153 is being completed.

The following statement is an example of what should be included in all other Form NRCS-CPA-153 details of non-compliance.

Failure to maintain Brush Management (Contract Item Number [CIN] 3) and Prescribed Grazing CIN 4). Brush species re-sprouting and new sprouts on field #6. Form KS-ECS-23, Vegetative Management, calls for minimum grazing height of three inches for fescue, which currently is not present. Participant agrees to treat and control brush sprouts on field #6 and maintain a minimum three-inch grazing height on field #6 by the date shown in Section 2 below. Failure to correct the non-compliance may result in the actions stated in Section 2 below.

### **Submittal of Waiver Requests and/or Form NRCS-CPA-153**

Submit waiver requests (Attachment 2) to the ASTC-FO using the electronic contracts system (eContracts). SDCs and DCs shall send an email notification to the ASTC-FO regarding pending waiver requests. Both SDCs/DCs and the ASTC-FO shall select “concur” or “not concur” on all requests.

Document Management System (DMS) notification will not be used by the field office for these waiver requests. The ASTC-FO will review and concur or disagree then submit the waiver using the DMS for approval or disapproval of the STC. The ASTC-FO will notify the state office Programs staff of the submission using the DMS notification process.

**Contact:** Forward questions through established channels to Monty R. Breneman, Assistant State Conservationist for Programs, at [Monty.Breneman@ks.usda.gov](mailto:Monty.Breneman@ks.usda.gov) or call him at (785) 823-4569.

*(signed)*

ERIC B. BANKS  
State Conservationist

Attachment